

## APPEAL NO. 010605

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 5, 2001. With respect to the issues before him, the hearing officer determined that the respondent (claimant) was not entitled to supplemental income benefits (SIBs) for the third quarter but was entitled to SIBs for the fourth quarter. In its appeal, the appellant (carrier) contends that the hearing officer erred in determining that the claimant is entitled to SIBs for the fourth quarter. The claimant did not respond to the carrier's appeal. In addition, the claimant did not appeal the determination that she is not entitled to SIBs for the third quarter.

### DECISION

Affirmed.

The only issue reported out of the benefit review conference was the claimant's entitlement to SIBs for the third quarter. By agreement, the parties added the issue of the claimant's entitlement to SIBs for the fourth quarter. However, the carrier did not seek to add an issue concerning the effect of the claimant's failure to file an Application for [SIBs] (TWCC-52) with the carrier at any point prior to the hearing in accordance with Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.104(c) (Rule 130.104(c)). That question was not before the hearing officer and it is likewise not before us on appeal. As such, we will not further address it in this decision.

The qualifying period for the fourth quarter of SIBs ran from August 20 to November 18, 2000. The evidence established that the claimant returned to work in a part-time position on August 28, 2000. The hearing officer determined that the claimant had satisfied the good faith requirement under Rule 130.102(d)(1) by returning to work in the relevant qualifying period in a job relatively equal to her ability to work. The question of whether a job is relatively equal is a question of fact for the hearing officer and the focus of the inquiry is on the hours worked and the ability to work, not on the wages paid. Texas Workers' Compensation Commission Appeal No. 000616, decided April 26, 2000; Texas Workers' Compensation Commission Appeal No. 000608, decided May 10, 2000. In Texas Workers' Compensation Commission Appeal No. 001579, decided August 17, 2000, we specifically rejected the argument that a claimant must work in a relatively equal position during each week of the qualifying period in order to satisfy the good faith requirement of Rule 130.102(d)(1). Under the guidance of Appeal No. 001579, we find no merit in the contention that the hearing officer erred as a matter of law in determining that the claimant in this case satisfied the good faith requirement under Rule 130.102(d)(1) by returning to a job relatively equal to her ability to work, albeit for only a portion of the qualifying period. The hearing officer's determination that the claimant satisfied the good faith requirement under Rule 130.102(d)(1) is supported by sufficient evidence and is not so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse that determination on appeal. Pool v.

Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Having affirmed the determination that the claimant met the definition of good faith under Rule 130.102(d)(1), she was not required to additionally satisfy the requirement of Rule 130.102(e) to document a job search effort in each week of the qualifying period. Texas Workers' Compensation Commission Appeal No. 000321, decided March 29, 2000.

The hearing officer's decision and order are affirmed.

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Robert W. Potts  
Appeals Judge